COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

Investigation by the Department commencing a rulemaking pursuant to 220 CMR Sec. 2.00 et seq. revising standards of conduct in 220 CMR Sec. 12.00 et seq.	D.P.U. 97-96

COMMENTS OF GREEN MOUNTAIN ENERGY RESOURCES LLC

Pursuant to the order of the Department of Public Utilities ("Department") issued herein on October 17, 1997 ("Order"), Green Mountain Energy Resources, L.L.C., a foreign limited liability corporation registered in Massachusetts ("GMER"), respectfully submits the following brief comments on the proposed revisions to 220 CMR Sec. 12.00 et seq. and certain of the questions raised by the Department in the Order.

1. Proposed Extension to Non-Energy Activities of Competitive Affiliates. GMER concurs with the proposed revision regarding the extension of the existing regulations to competitive affiliates engaged in non-energy activities. The basis of this support is the concern identified by the Department. Cross-subsidization should be a significant concern of the Department regardless of the type of competitive activity engaged in by the affiliate. This concern originates with the Department's fundamental duty to protect ratepayers from paying unjust and unreasonable rates. In this case, the Department must be vigilant that amounts included in rates are not attributable to expenses incurred for the benefit of shareholders engaged in unregulated activities.

2. Release of Customer Information to an Affiliate. GMER has two concerns with respect to the release, with authorization, to a competitive affiliate of specific customer information which may occur pursuant to the "exception" provision currently in 220 CMR Sec. 12.03(10).

The first is a narrow, but important technicality. Personnel of the utility should not be permitted to act as agents for the competitive affiliate in any manner in soliciting the authorization of any customer for the release to the competitive affiliate. Release to the affiliate must be prompted by the customer, acting on his or her own behalf, or acting upon the solicitation of the affiliate. If the utility's personnel prompt the giving of that authorization, an improper cross-subsidization of the affiliate has occurred. Utility personnel acting in this way on behalf of its affiliate may be interpreted as a violation of 220 CMR Sec. 12.03(3), but clarity would be added to the regulations if 220 CMR Sec. 12.03(10) were modified to make clear that authorization may not be obtained from the customer by the utility on behalf of its affiliate. In D.P.U. 96-44 (December 30, 1996), at page 10, the language of the Department may have contributed to confusion on this cross-subsidy issue ("At the same time, the Department recognizes that there may be situations where the affiliate has a legitimate right to the information, such as where the distribution company has obtained valid customer authorization, . . "). The language suggests that the distribution company could have obtained that authorization by its own actions.

Second, Green Mountain is concerned that, as currently drafted, it is not sufficiently clear that the distribution company has an obligation to provide customer-specific information on a non-discriminatory basis to any supplier who has obtained appropriate customer authorization. We believe that provision of such information on a non-discriminatory basis is absolutely essential. We also believe that this was what the DPU intended. At the bottom of p.8 of D.P.U. 96-44 (December 30, 1996), the Department refers to "the requirement to make information, products, or services available...". While information is dealt with in a separate section of the final regulations, it appears that there was an intent to make access to information, as well as products and services, available on a non-discriminatory basis to all suppliers, and that the exception carved out for provision of customer-specific information was intended to make it clear that a customer who wanted only the affiliate supplier to receive his/her information from the distribution company would not be required to have that information made available to all other suppliers. The exception should be more clearly constrained, and not allowed to swallow the rule against non-discrimination in the provision of information. It is quite likely that some customers will want their information released to another competitive supplier and not the utility affiliate, and that should be an option as well.

3. Use of Utility Name and/or Logo by Competitive Affiliate. The Department pointedly extended its request for comments as follows: "In addition, the Department seeks comments on other revisions of 220 CMR Sec. 12.00 et seq. that might be appropriate in order to protect ratepayers from improper use by gas or electric distribution companies of anything of value that was created in whole or in part with ratepayer funds." Order at page 4. The use by a utility's competitive affiliate in the competitive provision of retail electric or gas services of the utility's name and/or logo is a competitive advantage which is

(i) unrelated to the merits of competition in the market, i.e., the current competitive performance of the affiliate in the relevant energy market;

(ii) unavoidably intertwined with the utility's former status as an integrated regulated monopolist and must be seen as arising from this unique status;

(iii) capable of great impact on customers, particularly residential customers, in embryonic competitive markets such as the electric and gas markets where market imperfections will abound, including, without limitation, customer confusion and uncertainty, as well as significant customer "transaction costs" (relative to the perceived benefit) in making an intelligent choice; and

(iv) derived or created in whole or in part with ratepayer funds, presenting cross-subsidization concerns.

As recently as October 31, 1997, in Rulemaking 97-04-011 and Investigation 97-04-012 (investigating and establishing standards of conduct governing relationships between energy utilities and their affiliates), two California Commissioners, Commissioner Knight and Commissioner Bilas, proposed, for full Commission adoption, the following draft language:

"Based on these concerns, Petitioners believe that a prohibition of the affiliates' use of the utilities' name and logo is the only effective means to ensure that the utility does not gain an unfair advantage by virtue of its affiliation with a monopoly utility. We agree. Furthermore, the presence of any particular cost advantage for the affiliates, if they derive this advantage from their association with the utility and not from their own internal efficiencies, creates market power and entry barriers concerns. "

Decision ALTERNATE PAGES OF COMMISSIONERS KNIGHT AND BILAS at page 9 (attached hereto).

GMER supports strong affiliate transaction requirements. These requirements are necessary to assure a vibrant competitive market for electricity and gas and are especially important for the residential market. Residential customers are more likely to be influenced by implicit claims that a competitive affiliate will provide more reliable service and by the name recognition associated with the utility. Unrestrained use of the utility's name and/or logo exacerbates these concerns. GMER has supported the proposed rule by the two Commissioners in California, with some modifications noted in our brief comments on the rule, a copy of which is attached, and urges the adoption of a similar prohibition in Massachusetts.

GMER appreciates this opportunity to comment on the proposed revisions and to address the Department's other requests.

Respectfully submitted,

GREEN MOUNTAIN ENERGY RESOURCES, L.L.C
By its Vice President

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